

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NINA CHILARGI

Claimant

VS.

W. H. BRAUMS, INC.

Respondent

Self-Insured

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Docket No. 198,309

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated April 29, 1996 wherein Judge Barnes granted claimant benefits authorizing both Dr. Philip Mills and Dr. Mitchel Woltersdorf as the designated treating physicians.

ISSUES

Respondent raises the following issues:

- "1. It is uncontroverted that the claimant was provided authorized medical treatment.
- "2. At preliminary hearing, claimant requested change of physician to Dr. Mitchel Woltersdorf.
- "3. K.S.A. 44-510(c)(1) provides that in the event of a finding of unsatisfactory medical treatment has been provided, the Administrative Law Judge shall require the employer to submit the names of three health care providers that are not associated in practice together from that list the employer may select one of the health care providers who shall be the authorized treating physician.
- "4. In this case, the Administrative Law Judge has exceeded her jurisdiction by failing to provide the employer the opportunity to provide the names of three health care providers as provided by statute. It was uncontroverted in this case that the employer did

provide authorized medical care to the claimant up through the time of preliminary hearing.

- "5. Jurisdiction for this appeal has been established in the Board of Appeals decision in the case of Cherie Koch /sic/ v. TCI Docket No. 183,789."

The convoluted issues listed by respondent can be condensed as follows:

1. Whether the Administrative Law Judge exceeded her jurisdiction by failing to allow the employer the opportunity to provide the names of three health care providers under K.S.A. 44-510(c)(1). It should also be noted the case Cherie Koch cited by respondent, is instead Cherie Cook v. TCI, Docket No. 183,789.

Claimant contests the jurisdiction of the Appeals Board to review this matter on appeal from this preliminary hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-510(c)(1) states in part:

"If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider."

The dispute between claimant and respondent centers around whether claimant was being provided medical care at the time of the preliminary hearing. Claimant alleges respondent's authorized medical treatment had terminated. Respondent argues ongoing medical care was being provided through the authorized care of Dr. Moeller. The Appeals Board acknowledges Dr. Mills, in his December 4, 1995 report, stated he had nothing further to offer claimant. Thus, the dispute centers around whether or not ongoing authorized care was being provided through Dr. Moeller.

Dr. Moeller was called as a witness before the Administrative Law Judge at the preliminary hearing on March 14, 1996. At that time he recommended that claimant be referred to a good female psychotherapist, suggested a referral back to Dr. Mills for his recommendation regarding physical activity for the claimant and made additional recommendations regarding claimant's involvement in the community and with her family. Dr. Woltersdorf, claimant's expert, recommended use of low dose Elavil to combat the claimant's post-concussive headaches.

The record appears to indicate an ongoing dispute between claimant's and respondent's experts regarding what, if any, treatment should be provided to claimant. Both experts were provided the opportunity to review the report of the other and the opportunity to comment on the positive or negative aspects of each others diagnoses.

The dispute between the two experts regarding what treatment should be provided is a dispute easily resolvable within the jurisdiction of the Administrative Law Judge. This issue is not before the Appeals Board.

What is before the Appeals Board is the dispute regarding whether respondent was providing ongoing medical care at the time of the preliminary hearing. From the recommendations made by Dr. Moeller, it appears as though respondent continued to provide, at the very least, psychological treatment to the claimant through Dr. Moeller. The issue regarding Dr. Moeller's opinion of claimant's credibility revolves around whether the claimant and the doctor have a good doctor/patient relationship. Clearly, there is a lack of satisfaction by claimant regarding the services being provided by Dr. Moeller. Nevertheless, it appears as though respondent continued to provide ongoing medical care through Dr. Moeller. As such, if claimant is dissatisfied, the appropriate procedure dictated in K.S.A. 44-510(c) is for the employer to submit the names of three health care providers not associated in practice with each other. From this list of three, the employee may select the authorized treating health care provider.

The Administrative Law Judge, in the April 29, 1996 Order, found respondent was not providing medical treatment to claimant at the time of the preliminary hearing. The Appeals Board disagrees. A dispute between the parties regarding what, if any, treatment is appropriate is not a denial of treatment. Where there is a dispute between two experts and where respondent continues to authorize the course of treatment recommended by its own expert, and claimant seeks a change, the appropriate procedure to follow is listed in K.S.A. 44-510(c). The Appeals Board finds the Administrative Law Judge exceeded her jurisdiction in denying the respondent the statutory right to submit the names of three health care providers to the claimant.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated April 29, 1996, should be, and is hereby, reversed and this matter is remanded back to the Administrative Law Judge for proceedings consistent with this opinion.

The portion of the Order requiring respondent to pay the unauthorized medical for Dr. Woltersdorf's report and requiring the payment of temporary total disability compensation were not raised as issues before the Appeals Board. As such, these portions of the Administrative Law Judge's Order granting unauthorized medical payments and temporary total disability compensation remain in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

c: Cormac J. Johnston, Wichita, KS
Ronald J. Laskowski, Topeka, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director